

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION., et al.,	:	Case No. 18-23538 (RDD)
	:	
Debtors.¹	:	(Jointly Administered)

DECLARATION OF JOHN RULLI SUPPORTING OBJECTION OF SIMON PROPERTY GROUP, L.P. TO (I) NOTICE OF ASSUMPTION AND ASSIGNMENT OF ADDITIONAL CONTRACTS AND DESIGNATABLE LEASES AND (II) DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND LEASES

I, John Rulli, declare:

1. I am President of Simon Malls and Chief Administrative Officer of Simon Property Group, L.P. (together with its affiliates, “Simon”), a landlord of Debtor Sears, Roebuck and Co. (“Tenant”) with respect to retail premises located in the Cielo Vista shopping center in El Paso, Texas (“Cielo Vista Mall”), which, upon information and belief, is designated by Tenant as Sears Store No. 1317.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

2. Based out of Simon's headquarters in Indianapolis, Indiana, I am currently President of Simon Malls and Chief Administrative Officer of Simon. I have held numerous positions at Simon and have led the integration of multiple acquisitions since Simon went public in 1993. My expertise is in organization development and operations, and I have managed multiple aspects and have general oversight responsibility for the operations of Simon's real estate business. In this capacity, I am familiar with Simon's asset portfolio, documents and business records, and I (and those working under my direction) have been personally involved in various capacities in connection with asset management, acquisitions, dispositions, redevelopment and new development activities.

3. I have been a key member of the Simon Property Group management team for over 30 years. Prior to joining Simon, I served as Vice President of Human Resources and Administration for Meret, Inc. As a member of the executive committee of Meret, Inc., I was also responsible for developing and implementing strategic business initiatives for the company. I have also held various positions over a seven-year period with Lazarus, a division of Federated Department stores, in Human Resources and Administration.

4. This declaration is submitted in support of the concurrently filed *Objection of Simon Property Group, L.P. to (i) Notice of Assumption and Assignment of Additional Contracts and Designatable Leases and (ii) Debtors' Assumption and Assignment of Certain Executory Contracts and Leases* in these chapter 11 cases with respect to the proposed assumption and assignment of certain leases, including the Simon Cielo Vista Sub-Sublease (as defined below) to Transform SR LLC, upon information and belief, and affiliate of Transform Holdco LLC (the "**Buyer**"), an affiliate of ESL Investments, Inc.

5. As a consequence of my position, I (and those working under my direction) have access to and am one of the custodians of records of Simon as those books, records, and files relate to the use and occupancy of retail premises at Cielo Vista Mall. If called upon to testify in this proceeding, as to the matters set forth in this declaration, I could and would competently testify thereto, since the facts set forth herein are personally known to me to be true, except as to matters stated to be upon information and belief, which matters I believe to be true.

6. The Cielo Vista Mall is a climate controlled indoor mall shopping center consisting of approximately 1,245,292 rentable square feet located on El Paso's east side at Interstate 10 and Hawkins Blvd. The shopping center is occupied primarily by tenants engaged in the commercial retail distribution of goods, has shared parking areas, and includes contiguous stores with a strategic tenant mix to promote the value of the Cielo Vista Mall. Purposefully developed as a shopping center, the Cielo Vista Mall is anchored by Sears, Dillard's, JCPenney and Macy's, and has spaces for over 140 retail stores, restaurants and services, including well-known tenants such as Old Navy, Finish Line, Forever 21, Foot Locker, Zales, H&M, GNC, McDonald's, Starbucks, and Taco Bell. A copy of the mall map from the Cielo Vista Mall website, as well as a more detailed site plan, is attached hereto as Exhibit 1 and incorporated herein by this reference. Additional information related to the Cielo Vista Mall is available online at <https://www.simon.com/mall/cielo-vista-mall/stores>.

7. Celina Development Company, a predecessor-in-interest to Simon Property Group (Texas), L.P.,² as landlord, and Sears, Roebuck and Co., as tenant, are parties to that certain Cielo Vista Mall Shopping Center Sub-Sublease dated as of July 6, 1981 (the "Simon Cielo Vista Sub-

² Celina Development Company was an affiliate of Simon and was integrated into Simon when Simon became a public company in 1993.

Sublease") related to Sears retail premises commonly known as 8401 Gateway Blvd, El Paso, Texas (the "Cielo Vista Premises"), located in the Cielo Vista Mall, as more particularly described in the Simon Cielo Vista Sub-Sublease. A true and correct copy of the Simon Cielo Vista Sub-Sublease is attached hereto as Exhibit 2 and incorporated herein by this reference.

8. Additionally, Simon leases back a portion of the Cielo Vista Premises from the Tenant pursuant to a Sublease dated July 6, 1981, between Sears, Roebuck and Co. as Lessor and Celina Development Company (predecessor-in-interest to Simon Property Group (Texas), L.P.) as Lessee, which relates to shared parking constructed for the Cielo Vista Mall (the "Cielo Vista Parking Lease"). A true and correct copy of the Cielo Vista Parking Lease is attached hereto as Exhibit 3 and incorporated herein by this reference.

9. The term of the Simon Cielo Vista Sub-Sublease, which was last renewed on March 8, 2018, is currently scheduled to expire on December 31, 2024. A true and correct copy of Tenant's March 8, 2018 correspondence renewing the Simon Cielo Vista Sub-Sublease is attached hereto as Exhibit 4 and incorporated herein by this reference.

10. The Cielo Vista Premises are subject to a Reciprocal Easement and Operating Agreement (the "Cielo Vista REA") by and among Simon Property Group (Texas), L.P. (successor in interest to Celina Development Company) and Tenant, which establishes, among other things, certain operating and use requirements related to the operation of the Cielo Vista Mall and the Cielo Vista Premises (including common area maintenance, use, signage, etc.). A true and correct copy of the Simon Cielo Vista REA is attached hereto as Exhibit 5 and incorporated herein by this reference. The Cielo Vista REA and the restrictive covenants therein are designed to ensure that the Cielo Vista Mall as a whole functions and is operated in a manner for the mutual benefit of all parties.

11. In the ordinary course of its business, Simon typically requires credit enhancements, in the form of security deposits, letters of credit and third party guaranties when leasing (or assessing a proposed assignment of a lease) to certain companies based on their financial information and history. In the case of a new company, particularly a recently-capitalized “newco” created for the purpose of acquiring distressed assets, Simon would ordinarily seek substantial security in the form of cash deposits or letters of credit covering monetary obligations under assigned leases. The requirements for such additional security is dependent on the proposed tenant’s financial information, which has not been provided to date.

12. The Debtors, the Buyer, and the proposed assignee have not provided any information analyzing the Buyer’s or Transform SR LLC’s current or projected financial condition or operational capabilities compared to that of Tenant at any time period, including at the time the Simon Cielo Vista Sub-Sublease was entered into.

13. Neither Buyer nor Transform SR LLC have to my knowledge proposed to invest significant sums in the Cielo Vista Premises through remodeling, restoration and other capital improvements that would demonstrate a long-term commitment to the Cielo Vista Premises and potentially ameliorate credit risk. Moreover, to my knowledge, Buyer has not made any such commitment to the Cielo Vista Premises here and, indeed, has presented no information demonstrating that it has the liquidity to do so.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 23, 2019
Indianapolis, Indiana



JOHN RULLI